

COMMISSIONERS APPROVAL

CHILCOTT *g*

LUND *BL*

THOMPSON *at*

TAYLOR (Clerk & Recorder)

Date.....February 24, 2005

Members Present.....Commissioner Greg Chilcott,  
Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Glenda Wiles

The Board met with Civil Counsel James McCubbin and Environmental Health Director Theresa Blazeicevich relative to litigation that has been filed by Albert E. Webster. This issue is in relation to a ground water monitoring application by Mr. Webster. Chairman Chilcott called for a closed door session under MCA 2-3-304 due to a discussion of litigation strategy. Commissioner Lund made a motion to have James prepare a settlement agreement with Mr. Webster for one year water monitoring with two pipes and other issues as discussed during the litigation strategy. Commissioner Thompson seconded the motion and all voted "aye".

The Board met for a Request for Commission Action on the Falcon Subdivision. Present at this meeting was Planner Renee Van Hoven and Senior Planner Karen Hughes. Also present was Civil Counsel James McCubbin and the Developers Agent, Gilbert Larson of PCI.

Renee presented a power point presentation that was a summary of the Request for Commission Action and Staff Report which is included as follows.



**REQUEST FOR COMMISSION**

**ACTION**

OG-05-02-\_\_\_\_\_

Site Visit: February 23, 2005 at 4:00 p.m.  
Meeting: February 24, 2005 at 9:00 a.m.  
Request: To conditionally approve Falcon Estates Major Subdivision and Two Variance Requests.

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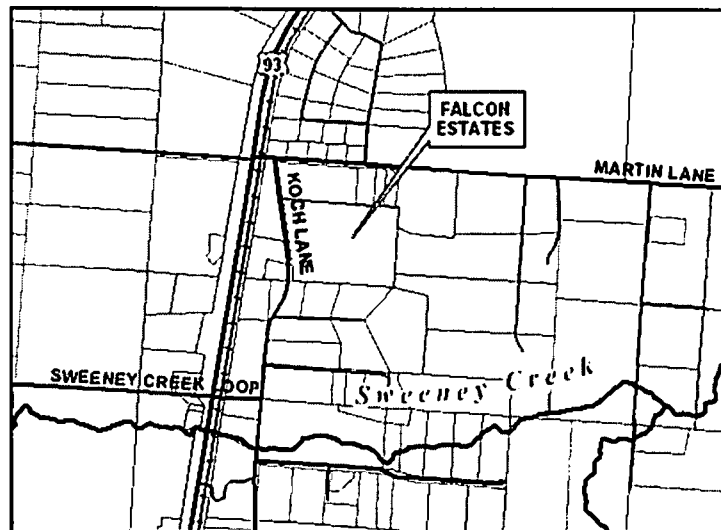
## I. ACTION REQUESTED

This is a request from Scott Twite, represented by Gilbert Larson, Professional Consultants, Inc., to approve **Falcon Estates Major Subdivision and Two Variance Requests**.

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## II. BACKGROUND

Falcon Estates is a thirty seven-lot major subdivision proposed on 23.62 acres, with lots averaging 0.49 acres. The property is located south of Florence and accessed from US Highway 93 by turning east on Martin Lane and then south on Koch Lane, a distance of approximately 700 feet (See Map 1). The developer is proposing to improve this route to county standards. Alternatively, the property can be accessed from the south by turning east off US Highway 93 on Sweeney Creek Loop and then turning north on Koch Lane, a distance of approximately 1,900 feet. The applicant is proposing to vary from the requirements to improve the alternative route.



Map 1: Location Map

The property is characterized by two large benches that run west to east. Between the benches is a lower elevation area containing old irrigation laterals and an empty stock pond. An existing vacant house and outbuildings are located on the southern bench. The bench slopes down to an intermittent drainage area which covers the southern boundary and the southeast corner of the property. The bench slopes range from 10% to 25% and greater. Cottonwood trees, willows, and wetland associated vegetation comprise the hummocky drainage

area which appears to attract non-game and game wildlife species. A 1.02-acre common area is proposed in the southeast corner that does not cover the entire area where there is wetland vegetation, no-build zones are proposed over slopes greater than 25%, and a no-build zone is proposed on the rear 25 feet of Lots 1 through 9. The other bench covers much of the northern half of the property. The northern bench is relatively level and contains grasses and weeds.

Lots within the subdivision will be served by individual wells and a community septic system with a community drainfield located in the northwest corner of the property. The 0.94 acres set aside for the common drainfield in the northwest corner is also proposed to be graded, topsoiled, and then re-seeded with grass to be a private park. The developer is required to dedicate 1.8 acres and is exceeding the requirement by dedicating a total of 1.96 acres of parkland to the Homeowners' Association.

*Staff recommended conditional approval of the subdivision.*

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### **III. PLANNING BOARD RECOMMENDATIONS**

The Ravalli County Planning Board conducted a public hearing on this proposal on January 19, 2005 and took the actions outlined below.

**Variance #1 (from Section 5-4-5 in the Ravalli County Subdivision Regulation, which requires the developer to improve Koch Lane from the southern boundary of the subdivision to the intersection with Sweeney Creek Loop)**

1. The granting of the variance will not be substantially detrimental to the public health, safety, or general welfare or injurious to other adjoining properties. *Four Board Members agreed, three disagreed, and two abstained.*
2. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property. *Seven Board Members disagreed and two abstained.*
3. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s). *Seven Board Members disagreed, and two abstained.*
4. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy. *Six Board Members agreed, one disagreed, and two abstained.*

5. The variance will not cause a substantial increase in public costs. *Four Board Members agreed, three disagreed, and two abstained.*

The Board made a motion to recommend **approval** of the variance request, based on the findings of fact in the staff report and subject to the conditions in the staff report. The motion was amended to include a one-time application of dust abatement to Koch Lane from the southern boundary of Falcon Estates to the intersection with Sweeney Creek Loop prior to final plat approval and subject to the review and approval of the Road and Bridge Department. **The Board voted 6-1 to approve this motion, with two abstentions.**

**Variance #2 (from Section 5-4-5 in Ravalli County Subdivision Regulation, which requires the developer to improve Sweeney Creek Loop from the intersection with Koch Lane to US Highway 93)**

1. The granting of the variance will not be substantially detrimental to the public health, safety, or general welfare or injurious to other adjoining properties. *Seven Board Members agreed and two abstained.*
2. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property. *Seven Board Members disagreed and two abstained.*
3. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s). *Seven Board Members disagreed and two abstained.*
4. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy. *Seven Board Members agreed and two abstained.*
5. The variance will not cause a substantial increase in public costs. *Seven Board Members agreed and two abstained.*

The Board made a motion to recommend **approval** of the variance request, based on the findings of fact in the staff report and subject to the conditions in the staff report. **The Board voted 7-0 to approve this motion, with two abstentions.**

### **Subdivision Proposal**

The Board reviewed the subdivision proposal against the six criteria as follows:

1. Effects on agriculture, including effects on the agricultural sector, loss of agricultural ground and effects on surrounding agricultural activities or

practices. *Seven Board Members agreed the effects were non-significant and two abstained.*

2. Effects on Agricultural water-user facilities. *Six Board Members agreed the effects were non-significant and three abstained.*
3. Effects on local services, including public road system, police and fire protection, utilities, and public schools. *Three Board Members found the effects were significant, four found the effects were non-significant, and two abstained.*
4. Effects on the natural environment, including ground water contamination, riparian/wetland areas, soil erosion, vegetation and air pollution, and noxious weeds. *Seven Board Members agreed the effects were non-significant and two abstained.*
5. Effects on wildlife and wildlife habitat, including fisheries and mammals. *One found the effects significant, six agreed the effects were non-significant, and two abstained.*
6. Effects on public health and safety, including sanitary issues such as sewage disposal and ground water contamination, police and fire protection, wildland fire hazard, traffic safety and the presence of other known hazards (onsite and offsite) such as high-pressure natural gas lines, airports, railroads, overhead power lines, industrial activities, mining activities, irrigation ditches and defined dam inundation areas. *Three members agreed the effects were significant, four members agreed the effects were non-significant, and two abstained.*

The Board made a motion to recommend **approval** of the Falcon Estates subdivision proposal, based on the findings of fact in the staff report and subject to the conditions in the staff report. **The Board voted 7-0 to approve this motion, with two abstentions.**

*Comments from the meeting are contained in the record.*

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#### **IV. ADDITIONAL COMMENTS RECEIVED SUBSEQUENT TO PUBLIC HEARING**

Several comment letters regarding Falcon Estates were received by the Planning Department subsequent to the public hearing on this subdivision. Letters were also sent to the Board of County Commissioners, which were forwarded to the Planning Department upon receipt. The Planning Director has reviewed the letters and determined they do not constitute new information. Copies of the letters are attached and include a letter from Lee Yelin addressed to Allan Steinle, Army Corps of Engineers, a letter from Lee Yelin addressed to Ray Lazuk, Montana Department of Environmental Quality, and a letter from Allan Steinle addressed to Scott Twite.

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## V. PLANNING BOARD'S RECOMMENDED MOTIONS

(Note: Changes to staff's recommended motions are in underline/~~strikeout~~.)

### VARIANCE REQUEST

1. That the variance request from Section 5-4-5 of the Ravalli County Subdivision Regulations be **approved**, to allow for relief from improving Koch Lane from the southern boundary of the subdivision to the intersection with Sweeney Creek Loop, based on the findings of fact in the staff report, with a condition requiring a one-time application of dust abatement to this portion of Koch Lane prior to final plat approval and subject to the review and approval of the Road and Bridge Department.
2. That the variance request from Section 5-4-5 of the Ravalli County Subdivision Regulations be **approved**, to allow for relief from improving Sweeney Creek Loop from the intersection with Koch Lane to US Highway 93, based on the findings of fact in the staff report.

### SUBDIVISION PROPOSAL

That Falcon Estates be **approved**, based on the findings of fact in the staff report and subject to the conditions in the staff report, with the clarification that the setbacks (from wetlands) and parkland dedication will be as proposed by the developer. (Staff note: this motion results in deletion of Condition #4.)

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## VI. PLANNING BOARD'S AND STAFF'S RECOMMENDED CONDITIONS

(Note: Changes to staff's recommended conditions are in underline/~~strikeout~~.)

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

***Notification of Proximity to Agricultural Operations.*** This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. (*Effects on Agriculture*)

***Lots within this subdivision do not have the right to take irrigation water out of the intermittent stream located along the southern boundary of this subdivision. Taking water without a water right for irrigation purposes is illegal.*** (*Effects on Agricultural Water User Facilities*)

***Notification of Road Maintenance.*** Ravalli County, the State of Montana, or any other governmental entity does not maintain the roads within this subdivision and therefore does not assume any liability for improper maintenance or the lack thereof. A Road Maintenance Agreement was filed with this subdivision and outlines what parties are responsible for road maintenance and under what conditions. (*Effects on Local Services – On-site Roads*)

**Notification of No-Build/Alteration Zone.** Within this subdivision there are no-build/alteration zones on Lots 1, 2, 7, 8, and 12 as shown on the plat to restrict building on slopes greater than 25%. No new structure, with the exception of fences, may be constructed in this area. (*Effects on Natural Environment – Soils*)

**Notification of Severe Soils.** Within this subdivision there are areas of the property identified as potentially having soils rated as severe for roads and building sites. The approximate locations of these areas can be found on a reduced copy of the final plat and descriptions of the severe soils in question which are included as exhibits to this document. (The applicants shall include the exhibits as attachments) (*Effects on Public Health and Safety*)

**Notification of Storm water Drainage Easements.** Within this subdivision there are storm water drainage easements. No structure may be placed within these easements that is not needed for storm water management. (*Effects on Local Services*)

**Notification of Utility Easements.** Within this subdivision there are utility easements. No structure shall be allowed to encroach into or set upon the utility easements. The utility easements shall remain unobstructed and accessible at all times. (*Effects on Local Services - Utilities*)

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

**Living with Wildlife.** Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, bears, mountain lions, wolves, skunks and raccoons. Contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife."

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- (a) There is the potential for **vegetation damage by wildlife, particularly from deer** feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.

- (b) **Gardens and fruit trees** can attract wildlife. Keep the produce and fruit picked and off the ground, because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- (c) **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners should be aware that deer might occasionally attract mountain lions to the area.
- (d) **Birdseed** can attract bears. If used, bird feeders should: 1) be suspended a minimum of 20 feet above ground level, 2) be at least 4 feet from any support poles or points, and 3) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- (e) **Garbage** should be stored in secure bear-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc. It is best not to set garbage cans out until the morning of garbage pickup.
- (f) **Pets** should be confined to the house, in a fenced yard, or in an outdoor kennel areas, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124).
- (g) **Pet food and livestock feed** should be stored indoors or in animal-resistant containers in order to avoid attracting wildlife such as bears, skunks, raccoons, etc. **When feeding pets or livestock** do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- (h) **Barbecue grills** should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc. can attract bears and other wildlife.
- (i) Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in



order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence.

- (j) **Compost piles** could attract skunks and bears and should be avoided in this subdivision. If used they should be kept indoors or built to be wildlife-resistant. (*Effects on Wildlife and Wildlife Habitat*)

**Primary Heat Source.** The primary heat source for the newly constructed residences in this subdivision shall be at least 75% efficient. (*Effects on Natural Environment*)

**Lighting for New Construction.** Full cut-off lighting shall be required for any new construction within this subdivision. A full cut-off fixture means fixtures, as installed, that are designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light emitted. The source of light is fully shielded, top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. Spot lighting of flag poles shall be permitted. (*Effects on Public Health & Safety*)

**Control of Noxious Weeds.** Lot owners shall control the growth of noxious weeds on their respective lot(s). (*Effects on Natural Environment*)

**Radon Exposure.** The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. (*Effects on Public Health and Safety*)

**Required Posting of County-Issued Addresses for Lots within this Subdivision.** The Florence Rural Fire District has adopted the Uniform Fire Code 901.4.4 which requires the lot owners to post County-issued addresses at the intersection of the driveway leading to the primary residence and the road providing access to the lot as soon as construction on the residence begins. (*Effects on Local Services & Effects on Public Health and Safety*)

**Access Requirements for Lots within this Subdivision.** The Florence Rural Fire District has adopted the Uniform Fire Code. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 20', a vertical clearance of 13'6" and an all weather surface that can accommodate the weight of a fire truck, approximately 40,000 lbs. to meet requirements of the Uniform Fire Code. Please contact the Florence Rural Fire District for further information on the requirements of the Florence Rural Fire District and/or the Uniform Fire Code. (*Effects on Local Services & Effects on Public Health and Safety*)

3. The subdividers shall include an RSID/SID waiver in a notarized document filed with subdivision plat that states the following: Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners and any successors in interest to any future RSID/SID, based on benefit, for a community wastewater system, community water system, or upgrading roads leading to or within the subdivision, including but not limited to paving, curbs and gutters, non-motorized transportation facilities, street widening, and drainage facilities. *(Effects on Local Services)*
4. ~~Space reserved for the Planning Board to negotiate with the applicant a condition to mitigate potential impacts of the subdivision on the natural environment and wildlife/wildlife habitat due to the existence of functional wetlands on the property. (See findings in the Natural Environment—Surface Water section of the staff report)~~
5. The subdividers shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. *(Effects on Public Health and Safety)*
6. The subdivider shall provide evidence with the final plat submittal that a \$150 per lot contribution to the Florence Carlton School District has been made. *(Effects on Local Services)*
7. The applicant shall contribute \$250 per lot to the Florence Fire District and provide evidence of that contribution with the final plat application. The final plat shall show an encumbrance of \$250 per lot due to the Florence Fire District upon first conveyance of each lot within the subdivision. *(Effects on Local Services & Public Health and Safety)*
8. The final plat shall show a non-ingress/egress zone along the Koch Lane frontage of Falcon Estates, excepting the two approved approaches for the internal road system. *(Effects on Local Services – Off-site Roads)*
9. The road maintenance agreement filed with the final plat shall specifically address maintenance of storm water drainage facilities within this subdivision subject to review and approval of the Planning Department. *(Effects on Local Services – On-site Roads)*
10. The subdivider shall provide a 20-foot wide access easement and construct a pathway from Maroon Court to the common area located in the southeastern corner of the subdivision. The pathway, at a minimum shall be 5 feet wide with a 6 inch compacted  $\frac{3}{4}$  inch minus crushed base course gravel surface, subject to review and approval of the Planning Department. *(Effects on Public Health and Safety)*
11. The subdivider shall make a one-time application of dust abatement to Koch Lane from the southern boundary of Falcon Estates to the intersection with Sweeney Creek Loop prior to final plat approval, subject to review and approval of the Road and Bridge Department. (Variance #1)

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<b>REMAINING ISSUES:</b>	None known.
<b>FISCAL IMPACT:</b>	No extraordinary fiscal impacts noted.
<b>ATTACHMENTS:</b>	Application package Staff Report Planning Board meeting minutes Additional agency comment letters from the Bitter Root Water Forum and the Florence-Carlton School District (handed out at Planning Board) Additional public comment letters handed out at Planning Board Additional comment letters received subsequent to Planning Board Hearing
<b>STAFF:</b>	Renee Van Hoven
<b>DATE:</b>	February 15, 2005

Public Comment was then called for.

Gilbert Larson of PCI Engineering stated he was the agent for the Developer Scott Twite. As such, he was in favor of this subdivision. Gilbert gave a brief history of this project and how his agency interacts with the Planning Office and other agencies. He stated PCI Engineering goes out on site to review the topography and they decide the best location for the roads and houses so the riparian areas are protected. They also look at the land in order to see the best possible location of the common area. Gilbert stated they met with Environmental Health Director Theresa Blazeicevich in order to review the location of the drain fields, etc. Gilbert indicated they also met with the School Superintendent and Fire District personnel; realizing the need to address the impact of the subdivision. Gilbert stated the Planning Staff and Planning Board were very helpful and he and the developer appreciated their assistance. He also relayed they met with the Road Supervisor to determine which roads need to be paved and which roads need dust abatement programs. He stated all of the residents will have paved access in and out of this subdivision. In regard to the park; they would like to develop a park at the north-west corner at the developer's costs. A sprinkler system and well will be constructed along with grass seeding prior to the park being turned over to the homeowners. There will also be a common area and a funding mechanism (a Special Improvement District) which will allow the homeowners to do what they like in the common area. The common area would only be open to the homeowners. The park would also receive the Special Improvement District funds, but it would be open to the public.

Gilbert relayed that with all of the work they have done in the past several months, he feels this is an excellent subdivision and asked the Commissioners to approve of this subdivision.

Opponents to the subdivision then spoke.

Lee Yelin stated he was hired by the adjoining landowners. He stated the landowners are opposed to the density of this subdivision. In regard to the soils, the Bitterroot Soils Survey states they are good and productive soils. He stated the soils are mapped correctly. He also stated that in regard to the affects of agriculture water, the ditches do not terminate on the subdivision property. He stated there are people downstream who are impacted by the water ditches that the developer being turned off in order to make the ground water pass monitoring. Lee stated one of the neighbors has relayed that her percolation did not pass. He also noted the nitrate in the wells is fairly high in this area. This subdivision has 37 homes being planned and across the highway, another recently passed subdivision will have 30 homes constructed. He asked who will be liable for the several shallow wells that already exist in the area. Lee stated he not seen any of the water tests. He also stated the wells in the area will be impacted by this development over the next several years. The neighbors that have relied on the water from the ditches have not had any for the past two years.

Lee noted that in his site visit, he found that Pole Creek is a jurisdictional wetland, which means that the Army Corp of Engineers has jurisdiction over the creek and it runs right through the southern building sites. He stated if the wetland and parks were removed from the proposed subdivision, there is only 14 acres of ground left for the construction of 37 houses. He stated the Army Corp of Engineers has been notified and they are going to do a site visit on this property.

Lee stated this high density development would be out of context with the neighboring areas because most are an average of seven acres in size. There have been moose in the area which indicates wetlands. And the neighbors have seen falcons which are on the endangered species lists.

Lee also addressed the roads in regard to their cost. He stated it would not be fair to put an SID on the neighbors who are opposed to this subdivision.

Toby Huin stated he works with Lee Yellin. Toby discussed the impacts on the water quality and quantity issues. In regard to the new technology of the septic tanks and water treatment; he addressed the piping that will be pumped to the end of the roads. The end of the roads are terraced which will result in a lot of pumping. He stated there will be quite a bit of piping required and piping does not last forever. He also stated the pipes will leak sometime in the future and he believes there are other ways to deal with this issue.

Toby felt that the housing density is a major issue. He also relayed that right across the street is the Mountain Meadows Subdivision and between that subdivision and this proposed subdivision there will some impacts on the adjoining land owners. He felt one of the major issues will be the nitrates in the water. Toby also felt there would be some issues of water availability. He stated the Falcon Subdivision will need some cut and fill for the benches. He stated the well logs show some shallow wells and he anticipates a cumulative effect from the 37 wells pumping 35 gallons per minute, and from the septic

system. He stated a study needs to be done on the impacts of these wells and that DEQ needs to address these issues. He felt there is no reason for this subdivision to be approved at this time. He stated if Mr. Twite feels this subdivision will not affect the neighbors, then he should guarantee in writing that if the neighbors have a problem with their wells, he will pay for any repairs.

Theresa O'Colley lives on the southern boundary to this proposed subdivision. She relayed that as a homeowner, she does not object to the subdivision, but to the density. Both her and her neighbors would like to see less wells and septic systems. She also stated the area is agriculture and fewer houses would fit better into the area.

Gilbert then gave a rebuttal to the comments made by the opponents. In regard to the soils, the county has gone through and compiled the list of prime agricultural soils. He can look at the list and find that this soil is not included in the list of prime agriculture soils. There are no downstream water rights. Rather, the neighbors simply benefited from the irrigation practices of the owner of this parcel. There is now a change in this land. The ditches were plugged off two years ago by the owner. The neighbors were receiving waste water from these ditches but they have no water rights. The developer has submitted a wetland determination to the Army Corp of Engineers. While they do not foresee any impact, they are asking for that input. The houses will be built up next to the road so it does not impact the wetlands. Karen Hughes stated the delineation request is new information. Gilbert stated he would discontinue discussing that issue.

Gilbert stated this subdivision will be reviewed by DEQ and the developer will follow their recommendations. The wells might be capable of producing 35 gallons per minute, but the individual homes don't need that kind of output. He did concur that the removal of the irrigation ditches will have an impact on the groundwater down gradient from this subdivision.

He stated the housing density has been addressed by having the pumping station, monthly testing and advanced treatments for clean aquifer. He stated if the developer is not able to obtain the housing density that has been proposed, they can not afford to put in the advanced water treatment system. Gilbert also relayed this area is within an urban growth area which is an appropriate use of the land.

Lee Yellin then commented on the gallons per minute of the wells. He stated that by changing from the flood irrigation practices, there will be an impact on the aquifer. He also stated there are downstream water rights on Pole Creek because once the water enters the creek; it is creek water not waste water. The Moore's are neighbors to this subdivision and they have pending litigation on this issue. He also felt if the developer is so sure this subdivision will not affect the neighbor's water quantity and quality problems, they should back up that up in a written statement.

No other public comment was offered. Commissioner Lund then closed the public comment period and asked for Board deliberation.

Commissioner Lund asked if the monthly testing would be done by the State DEQ or the local Environmental Health. Karen stated this issue is the responsibility of State DEQ and they do not become involved in this at the local level.

Commissioner Thompson asked about the 37 lots and 35 gallons per minute and if there were any state requirements. Karen stated the planning staff does not get into those details, because they rely on the expertise of the Environmental Health Office and State DEQ to review the quantity and quality of the water. .

Lee stated the banks require a well to pump 8 gallons per minute for standard loan and 5 gallons per minute with water storage. Any thing less than 5 gallons per minute, there might be problems with receiving a bank loan for the house construction.

Commissioner Lund asked about the no build zone. Renee pointed out the set back zone and or no build zone area on one of the maps. Karen stated the no build zone is on the steep slopes, which are set in the covenants.

Commissioner Thompson relayed that the Ravalli County Park Board Chairman wrote a letter to the developer addressing the low land area that has been set aside for the common area. Issues of concern are that the northwest corner of this common area is used for a drain field and utilized for recreation purposes. Commissioner Thompson stated the residents will probably have their own back yard swing sets and he doubted if the kids would go all the way over to the corner area, next to Highway 93 to play. He stated if the park was double this proposed area, they could put in some basket ball courts etc., but that can not be done over a drain field. Commissioner Thompson stated he did not feel this meets the criteria for a park and recreational area. He stated he is not in favor of accepting this as park land and would rather see the cash in lieu of park monies.

Commissioner Thompson also addressed a citizen comment about the corner area being used as a 'meth dealing area'. He stated he did not think that was likely. And in regard to recharging the aquifer, sprinkling does not recharge the aquifer but irrigation does. He also addressed comments from the citizens in regard to wells going dry and the high ground water in the area. He stated you 'can not have one and not the other'. He also indicated that the information they have been shown is that there is a tremendous amount of aquifer in that area. Commissioner Thompson asked who would deal with the water treatment system. Karen responded that the Homeowners Association and the RSID waiver would address any failing of that treatment system.

James stated a RSID would work for the road and sewer system and the waiver of all property owners would apply. Therefore the Commissioners need to adopt whatever is within the RSID, such as the roads as county roads, and a sewer system being a public sewer system. He indicated the statute for RSID addresses the public interest.

There was some discussion of the private park being opened for the public. James felt it needs to be a public park, but that was simply his opinion. The county has no oversight on the maintenance, as the assessment includes the maintenance, engineering and

infrastructure. James felt the waivers from the home owners should keep the county's cost at a net zero.

Commissioner Thompson addressed the neighbor's comments relative to the housing density issue. He stated there is nothing the Commissioners can do relative to the density. In regard to curb, gutter and sidewalk issues, he would be in favor of cutting the housing density in order to do away with the curb, sidewalk and gutter requirement. He commented this subdivision is outside the community limits.

Gilbert stated they looked at several different concepts including the lesser density. However, when they looked at the growth in Florence, they felt this was the most appropriate use of the land.

Commissioner Lund commented that if the sewer and water is ever provided from Florence, this subdivision system is already designed to hook into the northwest corner. She stated she appreciated that kind of planning for the future.

Commissioner Chilcott asked about the wetland delineation and Army Corp of Engineers. Karen stated the developer may have to revisit the plat lay out. Renee stated they would have to apply for a permit if the Army Corp of Engineers determines there are wetlands.

Commissioner Chilcott commented that in regard to the irrigation run off; that is a terminal water right and any wastewater was not guaranteed to the home owners below the subdivision. Therefore, the water that recharged or flowed into Pole Creek was certainly not a right to anyone down stream. James stated the Commissioners have evidence to that effect in the record. (The record reflected there were no down gradient water rights).

Commissioner Lund addressed the cash in lieu of park land. Commissioner Thompson stated the developer can develop the park at his own expense. He also stated that it is nice there will be open space, but it does not meet the requirement or criteria of park land dedication. Therefore if they want to configure 1.8 or 2 acres in order to develop a ball field etc., that would be fine. But the way this park and common area is being developed, the park board feels the county should accept cash in lieu money. James stated the Commissioners can give due consideration to the developers wishes and through the recommendation of the planning staff. The Commissioners can then decide if the developer should make a land donation, cash in lieu or a combination of both.

Commissioner Thompson asked the developer how he would mitigate his concerns of meeting the requirement or criteria for the park land dedication. Scott asked what the cash in lieu amount totaled. Karen stated the total amount would be \$9,236.00. The acre value is \$5,248.00. Gilbert stated the developer does not want to reduce the size of the common area and park area. He stated they would be agreeable to a combination of land and cash. He asked if the Commissioners could consider the corner area as part of the park dedication and the difference in acre value could be made up in the cash in lieu contribution. The developer agreed that the common area would not be calculated into

the park land area. After some calculations it was agreed the difference would be around \$4,300.00 in cash in lieu. Karen stated there is no requirement in the conditions of approval for having the northwest corner of this area developed into a park. She reminded the Commissioners that although the developer is stating this, it is not a requirement.

Gordon stated this is part of their proposal for seeding, irrigating etc., and they do not have a problem adding an extra condition for this mix of land and cash. Glenda asked for a clarification of this agreement for the record. It was agreed that it would be as follows:(now listed as condition no. 4, because another requirement was removed)

- .094 acres of park land,
- cash in lieu in the amount of \$4,300.00,
- the park being maintained by the Homeowners Association,
- developer installing sprinklers, well and seeding

Commissioner Lund asked about the one time dust abatement being completed before final plat. Karen stated that was correct and it is with the approval of the Road and Bridge Department. Commissioner Chilcott stated the time of application does not make sense because the dust is an issue and impact during the time of the construction. James stated there is no way to set the date of the dust abatement application but it needs to be done by the time of final plat. He stated the enforcement of this requirement is either done by litigation or the actual filing of final plat. There was some discussion of the dust that is created by road construction and tying the dust abatement to the permit approach. Gilbert stated they agree with the dust abatement application and that the time it needs to be done is when there is the greatest need. He asked if the improvements could be bonded for a two-year period after the final plat. He also stated the developer would be happy to provide a mechanism for the application of dust abatement when it will have its best effect. James stated the bonding only kicks in at the developer's option and not after the time of final plat. Gilbert stated they could request a bond at the time of final plat. It was agreed the language for condition no. 11 should read "dust abatement shall be done at a time and in a manner to maximize the dust abatement". James commented this is not enforceable. The developer stated he would make sure it was done in the proper manner and at the right time.

Commissioner Lund made a motion that the variance request from Section 5-4-5 of the Ravalli County Subdivision Regulations be approved to allow for relief from improving Koch Lane from the southern boundary of the report, with a condition requiring a one time application of dust abatement to this portion of Koch Lane prior to final plat approval and subject to the review and approval of the Road and Bridge Department and that the dust abatement shall be done at a time and in a manner to maximize the dust abatement. Further that the variance request from Section 5-4-5 of the Ravalli County Subdivision Regulations be approved to allow for relief from improving Sweeney Creek Loop from the intersection with Koch Lane to U.S. Highway 93, based on the findings of fact in the staff report. Commissioner Thompson seconded the motion and all voted "aye".



Commissioner Lund made a motion that the Falcon Estates be approved based on the findings of fact in the staff report and subject to the conditions in the staff report, with the clarification that the setbacks (from wetlands) and parkland in the amount of .94 acres be dedicated to the Homeowners and \$4,303.36 be given to the park fund for cash in lieu of park, and the developer agrees to grade, install the well, sprinkler system and seed the northwest corner in the subdivision for this park land. Commissioner Thompson seconded the motion and all voted "aye".

The public meeting was adjourned.

The Board met with Election Administrator Nedra Taylor, Elections Supervisor Regina Wilson and Department of Revenue Supervisor Debbie Reesman. There were many cemetery district representatives in the audience. The issue for discussion was relative to the creation of the cemetery districts. Regina stated the original idea was to get the districts onto the upcoming May ballot. However, some districts could not get their petitions completed in order to make that May deadline. Regina stated the Grantsdale Cemetery did get their petition done so they will be on the May Ballot. One issue is that any new taxing jurisdictions need to be done by January 1<sup>st</sup>, in order to get them on the tax statement. Therefore she began to look at a September date for a ballot, which is not a normal time.

Debbie Reesman stated even with some changes, they can still not get this on the tax bill for this year. She stated their time lines are mandated by state statute or code and they must be formally notified of any changes in taxing jurisdictions by January 1<sup>st</sup> for the year they are being sought. Debbie also relayed if a district were to be formed and on the ballot in May and they levied the taxes prior to the correct time, someone could file a court case and they would be in violation of the Montana Statutes. She stated if they were to form the districts in May and September, and then they are notified in January 2006, they could then make their tax levy.

Regina stated with the recent law suit they find the timing is not discretionary. Debbie stated the DOR had advised them that 'they may not' (create the tax levy) which means 'shall not'. James stated he disagrees with the Department's interpretation, but the county must follow the Department of Revenue's lead on this time frame for tax levy. Debbie stated the outcome of a pending court case may have a bearing on this time line issue, but that does not help today.

Audience member Leona James asked if the cemeteries could be considered a charity. James stated the memo addressed by him to the Commissioners was in August 2004. It was written relative to the budget and community based organizations. In his review of the law he determined the cemeteries are private organizations and the county can not tax them. Therefore the cemeteries must form their own districts.

Michael Howell stated his interpretation is that the county can give funds to a municipality or for 'a contract for services'. James stated these are not county cemeteries and therefore, they are not a governmental agency. Michael stated the Town of

Stevensville gave money to a private organization as a 'contract for services'. James stated they are not giving money to an organization, they are entering into a contract for service which is legal under the code. However the county does not have a county cemetery to contract for.

Boyd Mason of Lone Rock stated there is an agreement to fund these cemeteries (he was referring to agreement of 1945 with Darby Cemetery). He asked if this was a legal document. James stated it was not a legal document and therefore the agreement is void and not enforceable under the current law. He stated it is unknown if it was legal in 1945, but that does not matter now as they must follow the current law. James stated it would be illegal for the Commissioners to do what the contract stated. Boyd stated the Commissioners have cut the cemetery volunteer's feet out from under them and they are trying to gather signatures in order to form a district so that people can be buried. Boyd stated the Commissioners are putting this problem on the volunteers. He stated they need to continue to bury people yet they have no funding.

Commissioner Lund stated the Commissioners have funded the cemeteries through June 30, 2005. They will need to review this issue in the upcoming budget year. Regina stated if they can get the districts on the ballot for the November 05 election, the cemetery funds could be assessed on the tax statements in November 2006. So that would leave one more year the cemeteries need to be funded. Boyd stated the Commissioners should 'step up' and insure they will have some funding for that interim period. Commissioner Chilcott stated the Commissioners are not saying they don't want to help, but they need a legal means to fund the cemeteries in that interim period. Boyd stated the 1945 document is legal and it is a matter of health and welfare to bury the bodies.

Regina stated she reviews the tax assessment rolls. She advised the volunteers they need to have the petitioners sign their names as they would for voter registration. She stated if she can confirm the name, she can count the vote. She also relayed that the address helps if it is the same address as on the voter registration.

Clerk & Recorder Nedra Taylor stated they cannot provide a list of the taxpayers to the volunteers for the purpose of obtaining signatures without their approval. Commissioner Lund stated the cemetery volunteers can come into the Elections Office and 'punch the print button for these names'. Nedra stated the names can only be printed individually.

Debbie stated if they could change the date requirement, and it occurred in August, it would be after the certification of values. Therefore the soonest the tax bill can go out is November 2006. James stated he has reviewed this funding under the statute and he can not find where the statute allows the Commissioners to fund these cemeteries.

Dan Paddock asked who owns the land that the cemeteries are located on. He noted that some cemeteries are corporations while some are not. Corvallis, Sula, Victor, Sunnyside are all Cemetery Associations.

Grace Wilson asked if they could obtain the names for the ballot from the voter's registration. And why do they have to be a homeowner? James stated that is how the legislators set up the process in 1943 and it is current law. He then read a portion of the statute that stated 'the petition for formation of a cemetery district, requires signatures of not less than 20% of the citizens who are owners of the land in the last assessment roll'.

Leona James of Lone Rock asked several questions, such as, could these cemeteries be grandfathered in. She stated the county has not been giving the cemeteries a gift, rather the citizens have been taxed for it. Commissioner Lund stated those monies had to be given to the cemeteries and not to the general fund. She stated the county collected \$18,000.00 in the 2003 budget year. James stated these monies are not a separate tax; rather at some time in the past the Commissioners created a line item. He also noted that as long as the total does not exceed the total mill levy, the county can put that on the tax bill.

Sharon Richards stated the people are saying that cemetery levy use to be on their taxes and now it is gone. She asked why. She also stated there are quite a few people moving into these cemetery areas and they could care less about the cemeteries. She stated she did not know if they could collect the needed 20% signatures.

Treasurer JoAnne Johnson was now present. Commissioner Chilcott presented Leona's list of questions to JoAnne. Question number one was when were the taxes for the cemeteries added. JoAnne answered it was many years ago. Question number two was how much taxes have been collected for the past five years. JoAnne answered that they balance the revenues versus the expenditures. Question number three was how much money was returned to the cemeteries. JoAnne indicated all of the money was. The last question was when was the taxes removed from the tax bill. JoAnne state it was removed this year by the Commissioners.

James asked if there was any way to go back and see if there was a mill levy vote. Regina stated she could go back within the records and see if they could find that date.

Sharon also asked why the museum still obtains money and the cemeteries are dropped off. She also noted the cemeteries got less money than the museum. James stated the law has a distinction that allows Commissioners to enact a mill levy for museums and there is no authority for the cemeteries. James also stated this is a general power county and the county can only do what the legislators say the county can do.

Don Thorson of Corvallis stated the Commissioners cut the funding in half two to three years ago. He stated they were given \$3,600.00 and now they are only being given \$1,800.00. In the 1960's the Corvallis Cemetery Association did not pay bills for services at the cemetery, rather the county paid the submitted bills. Commissioner Chilcott stated the county revenues were also cut in half so they are not arguing these facts. Don also stated that in the early 1970's the county decided to turn over some monies to the cemeteries and let them pay their own bills. Commissioner Chilcott stated they are not refuting these points that Don is bringing up.

Don advised the Commissioners that 'they set them all up and now they are jerking the rug out from under them'. Commissioner Chilcott stated the Commissioners are not villains and while they would like to support the cemeteries, they must also follow the law and the law does not allow them to continue that funding. In 2002, the county received \$37,000 in revenues and they had that much in expenditures. In 2003, the county received \$32,000 and they spent \$36,000.00. He also stated the revenues are falling off each year due to House Bill 124. JoAnne agreed stating the county now sends all of their monthly revenues to the state and the county does not obtain the entitlements back until the quarter ends. In the mean time the state keeps more of the county's money. She stated Ravalli County has no control over this. Commissioner Chilcott advised the audience that the county gives back to them what the county collects from the tax payers. He stated he understands their plight, and in attempting to do the right thing, they are trying to help them make their formation of the districts successful.

Debbie stated if the districts can be formed by the first of the year, they are only looking at a one year period for funding. She asked if they could increase the mills the first year to pay back money that they might be able to borrow from the county for that one year interim period. James stated in terms of the mill levy amount, it could be worded to take more mills the first year if they needed to borrow money for that one year interim period.

Reg Wilson of Corvallis asked if they were able to form their district, would half of their money go and stay in Helena. Commissioner Lund stated no.

Grace asked how the law suddenly changed. She also expressed concern that most are assuming they are going to get enough signatures. She stated it is hard to do. James stated the funding of these cemeteries might very well have been illegal in the past. He stated with Civil Counsel now being available to the Commissioners on a full time basis, there is much more scrutiny of the law, and therefore it was brought to light by his research during the last budget year.

Dana Green asked if the law allows the county to create its own cemetery districts. James stated there can be a county owned and operated cemetery and the county can create cemeteries. Commissioner Lund asked if they could create 'one big cemetery' and have these cemeteries be 'sub cemeteries' of the larger one. James stated the land that the cemeteries rest on would need to be deeded to the county if the Commissioners decided to do that.

Leona asked if this could be grandfathered in. James stated the best grandfathering is to interpret this as an implied contract, but it is his opinion and County Attorney George Corn's, that it is illegal to fund cemeteries out of the budget this year. But the Commissioners decided to fund them through the budget year by looking at the funding as a contract claim for 'an implied contract'.

Susan France of Grantsdale asked if the 1945 agreement was legal. James stated it was probably legal with the Darby Cemetery but not to those that were outside of Darby.

Susan asked if that letter (1945) could be used to fund the other cemeteries. James stated it was his opinion that it can not.

Reg Wilson stated the cemeteries need to take some ads out in the paper and go to the radio station so they can get some interest in this issue.

Michael Howell asked if the county has an obligation to deal with dead bodies due to the public health and safety issue. James stated there is no direct obligation by the county to form a cemetery. He stated he has not researched the public health and safety issues. Michael stated these issues have been done in conjunction with the county in years past, so should they send the bodies elsewhere?

Sharon asked if the county took over the cemeteries, could they deed the county their land. Commissioner Lund stated the county would need to accept the deed. Susan stated that might be a real issue if they do not obtain the signatures and the vote needed in order to form the district.

Commissioner Thompson stated they received this information from James just before last year's budget. He stated as the Commissioners become aware of the law, it is important that they follow it. He stated he was adamant to fund the cemeteries for one more year until they could form the districts. However, he 'still got called on the carpet for extending the county's liability'. He stated all of the Commissioners want to help the cemeteries and it is important that they help them even if they must fund them one more year. He suggested they continue to move forward with their petitions, and in the meantime, the Commissioners will look into a county wide cemetery.

Another audience member asked how other counties fund their cemeteries. Commissioner Chilcott stated he does not want to follow other counties, he wants to follow the law. He also stated Ravalli County ends up being in litigation because we try and follow the law.

Commissioner Lund asked who would vote on the Grantsdale petition to create a district. James stated the statute follows the general election laws. Therefore it is the registered voters and although the petition is signed by the landowners, it is the registered voters who vote on it. James stated counties may establish a cemetery, or the cemeteries can be acquired by a gift or through condemnation.

Boyd thanked the Commissioners for their opportunity to 'mouth off' on their problems. He stated constitutionally the county has an obligation to bury the dead and that should override any statute that says the county can not fund them. He suggested the Commissioners visit with the Legislators and have this law changed.

James stated he will review the administrative rules relative to the public health and safety issue for dealing with dead human bodies.

Scott Colvin asked about the signatures versus the actual voter. Commissioner Chilcott stated that is the law, so that too can be addressed that with legislators in Helena. Scott stated the Commissioners should work to have House Bill 124 rescinded.

Commissioner Chilcott thanked everyone for coming.

In other business the Board addressed the appraisal bids for the three park properties they would like to sell at a public auction. Glenda sent out letters to all qualified appraisers in the valley. Three bids were received as follows:

- Butch Smith Appraisal at \$300.00 per parcel with a 10% discount if he appraises all three parcels, for a total amount of \$810.00
- C & E Appraisal at \$750.00 for the three parcels based on the 'hypothetical condition' that these parcels could be home sites with all that is required to be (well, septic, right of way etc.)
- Darwin Ernest Appraisal at \$600.00 per parcel

Commissioner Lund made a motion to appoint Butch Smith as the appraiser for the three park land properties in the amount of \$810.00, with payment for this appraisal service to be taken from the Park Fund. Commissioner Thompson seconded the motion and all voted "aye".